

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Medicaid Estate Recovery

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is proposing to adopt the following rule as authorized by R.S. 46:153(G) and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act.

Previously, federal law and regulations did not require states to seek recovery for Medicaid payments made under the State Plan from the estates of individuals. However, the Omnibus Budget Reconciliation Act of 1993, Section 13612(a) amended Section 1917(b) of the Social Security Act (42 U.S.C. 1396o) thereby mandating that states seek recovery of Medicaid payments for certain services provided under the State Plan. In order to comply with this federal law and to avoid sanctions or penalties from the federal government the bureau is proposing to adopt the following rule. This proposed rule implements an estate recovery program to recover Medicaid payments made to Medicaid recipients as required by the Social Security Act and federal regulations contained in 42 CFR 433.36 (c)-(g). It is not possible to estimate the fiscal impact of this proposed rule due to the various unknown factors involved with this effort; for example, the number of Medicaid recipients receiving services from whom estate recovery is allowable under federal law and regulations and the monetary value of the services to be received by these recipients, whether their estate resources would be equal to the value of services received.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to implement the Medicaid Estate Recovery Program in accordance with the requirements of the Social Security Act and federal regulations. The Bureau of Health Services Financing shall seek recovery of Medicaid payments for nursing facility services, home and community-based services, and related hospital and prescription drug services from the estate of an individual who was 55 or older when such services were received.

I. Definitions

A. Estate. Shall be understood to be the gross estate of the deceased as determined for federal estate taxes.

B. Cost effectiveness. The process whereby the Medicaid agency balances and weighs that which it may reasonably expect to recover, against the time and expense of recovery. Application of the provision will be deemed to be cost effective when the amount reasonably expected to be recovered exceeds the cost of recovery and the amount reasonably expected to be recovered is greater than \$500.

C. Undue Hardship. An undue hardship exists when application of the provision would result in placing an unreasonable burden on a surviving spouse and/or a dependent. An undue hardship may exist when:

1. the estate is the sole income producing asset of the surviving spouse and/or dependent, and income from the estate is limited;
2. recovery would necessitate the surviving spouse and/or dependent becoming eligible to receive public assistance, including but not limited to Medicaid;
3. any other compelling circumstances that would result in placing an unreasonable financial burden on the surviving spouse and/or dependent.

An undue hardship does not exist if the circumstances giving rise to the hardship were created by, or are the result of estate planning methods under which assets were sheltered or divested in order to avoid estate recovery.

D. Dependent. By dependent is meant any of the following individuals for whom the decedent provided more than one-half of his or her support during the immediate 12 months prior to the death of the decedent: the decedent's:

- a. son, daughter, step-son, step-daughter or a descendent thereof;
- b. brother or sister, whether by blood or marriage, or a descendent thereof;
- c. father, mother, step-mother, step-father, or sibling or ancestor thereof;
- d. son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the decedent.

II. General Provisions

A. Medicaid estate recovery is not a condition of eligibility. The applicant/recipient shall be informed at the time of application/redetermination that federal law and regulations mandate estate recovery action by the states and that medical assistance claims paid by the Bureau of Health Services Financing may be subject to estate recovery.

B. Recovery Limitations

nam

1. Recovery can only be made after death of the individual's surviving spouse, if any, and only at the time when the individual has no surviving child under age 21, or a child blind or disabled as defined in Section 1614 of the Social Security Act.

2. Recovery from home property can only be made when a) there is no sibling of the individual residing in the home, who has resided there for at least one year immediately before the date of the individual's admission to the institution, and has resided there on a continuous basis since that time, and b) there is no son or daughter of the individual residing in the home, who resided there for at least two years immediately before the date of individual's admission to the institution, has resided there on a continuous basis since that time, and is able to establish that he/she provided care which permitted the individual to reside at home rather than in an institution.

C. Recovery may be waived in cases in which it is not cost-effective for the state to recover from the individual's estate.

D. Recovery Notice. Individuals from whom recovery for medical assistance will be sought by the Bureau of Health Services Financing will be given advance notice of the proposed action and the time frames in which they have the opportunity to apply for an undue hardship waiver.

The notice will be served on the executor or legally authorized representative of the individual's estate. If there is no executor or legally authorized representative, the notice will be sent to the family or the heirs. The notice shall also specify the following information:

1. the affected recipient's name, Social Security Number and recipient number;
2. the action the state intends to take;
3. the reason for the action;
4. the individuals's right to a hearing;
5. the method by which the individual may obtain such a hearing;
6. the time periods involved in requesting a hearing or in exercising any procedural requirements under the Medicaid Estate Recovery Program;
7. the right to and procedure for applying for a hardship waiver;
8. the dates of service associated with the recovery action and the amount of the bureau's claim, i.e., amount to be recovered against the recipient's estate.

The notice will request that the following information be provided to bureau:

1. copies of all state and federal estate tax returns prepared and/or filed in connection with the succession of the decedent;
2. copies of all succession pleadings filed in connection with the succession of the decedent, including any judgement or judgments of possession;
3. in the event no state or federal estate tax return has been filed or prepared and/no succession has been judicially opened, the bureau is to be advised as to when such documents will be available and/or when the succession is expected to be opened.

III. Administrative Review of Agency Decisions

Any aggrieved party may request that the agency review and reconsider any or all aspects of the particular recovery matter in which they are involved. This request must be made within 20 days of the receipt of the notice of the agency's claim for recovery. If such a request is timely made, the agency shall review the matter and shall review and consider any facts or documentation presented or forwarded to it in connection therewith. In addition to this informal reconsideration, any aggrieved party shall have the administrative appeal rights available pursuant to the Louisiana Administrative Procedure Act.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA. He is responsible for responding to inquires regarding this proposed rule.

A public hearing will be held on this matter at 9:30 a.m., on Tuesday February 27, 1996 in the first floor Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

nam

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that there will be no significant fiscal impact for state fiscal year 1995-96 from this proposed rule. At this time it is not feasible to estimate the fiscal impact of this proposed rule for state fiscal years 1997 and 1998 due to the lack of essential data to make accurate fiscal projections. Such needed data would include the amount of the Medicaid expenditures that will be made for persons who will be subject to this rule and the value of their estate resources which may be recoverable under this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that there will be no change in federal revenue collections for SFY 1995-96 and it is not feasible to project changes for state fiscal years 1997 and 1998.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Heirs to the estates of Medicaid recipients who received specific Medicaid services at age 55 or over will be affected by the recovery of Medicaid payments from these estates.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9601#057

David W. Hood
Senior Fiscal Analyst